IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3311 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER - Petitioner(s)

Versus

BALDEVBHAI JETAJI THAKOR C/O JS BRAHMBHATT - Respondent(s)

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Appearance :

MR KM PARIKH for Petitioner No(s).: 1.

MS PARAGI K PARIKH for Petitioner No(s).: 1.

MR JS BRAHMBHATT for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 09/08/2005

ORAL JUDGMENT

1.0 The petitioner Corporation has challenged the award dated 19.02.1998 passed by the Labour Court, Vadodara in Reference No. 158 of 1995 to the extent of awarding 50 % back wages to the respondent.

2.0 The short facts of the case are that the respondent herein was employed as a Driver by the petitioner Corporation. It is the case of the petitioner that the respondent remained unauthorizedly absent for the period from 09.02.1994 to 19.02.1994. Therefore, charge-sheet was issued to him on 23.02.1994. Pursuant to the above, departmental inquiry was held and since the charges leveled against him were proved, ultimately, he was dismissed from the service vide order dated 18.08.1994.

2.1 Being aggrieved by the said order, the respondent raised a dispute, which, ultimately, culminated into a reference before the Labour Court. The Labour Court, by impugned award, quashed the order of dismissal and directed the petitioner to reinstate the respondent on his original post with continuity of service and 50 % back wages.

3.0 Pursuant to the award of the Labour Court, the respondent has been reinstated in service. By way of this petition, the petitioner has challenged that part of the impugned award by which the petitioner was directed to grant 50 % back wages to the respondent. While admitting the matter on 28.09.1999, this Court had stayed the

implementation of the impugned award of the Labour Court qua payment of back wages only.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. In the impugned award, the Labour Court has not given any cogent reasons as to on what basis it has awarded 50 % back wages to the respondent. It has proceeded only on the premise that if 50 % back wages is granted to the respondent, it would meet the ends of justice.

4.1 In view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

4.2 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua

granting 50 % back wages to the respondent is required to be quashed and set aside.

5.0 For the foregoing reasons, this petition is allowed. The impugned award dated 19.02.1998 passed by the Labour Court, Vadodara in Reference No. 158 of 1995 to the extent of awarding 50 % back wages to the respondent is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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